

Even though sales may be at retail, the Illinois Retailers' Occupation Tax (i.e. sales tax) does not apply to farm machinery and equipment, both new and used, including that manufactured on special order, certified by the purchaser to be used primarily in production agriculture or State or federal agricultural programs. See 86 Ill. Adm. Code 130.305. (This is a GIL.)

September 26, 2001

Dear Xxxxx:

This letter is in response to your letter dated June 11, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be accessed at the Department's Website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

I am writing this letter to request a legal determination on whether certain items (listed below), used by farmers for agricultural purposes, qualify for sales tax exemption under the Farm Machinery and Equipment Exemption.

We have had customers complain because we charge sales tax on the items listed below. They have told us that our competition, AAA, will sell these items without charging sales tax because the items qualify for the Farm Machinery and Equipment Exemption. The items in question are as follows:

Barb Wire	Cattle & Hog Panels	Tube Gates
Steel T Posts	Woven Field Fence	Wooden Post
Electric Wire	Baler Wire	Baler Twine
	Electric Wire Insulators	

I have been told that a factor to be considered with the fencing items above is whether the fence is temporary. If this is a factor, please be specific as to what fencing items qualify as temporary, because if I ask a customer, they will say that every fence is temporary. Therefore, I would like a definite yes or **no** to each item listed. If there is an exception to any item, I would like to know specifically what makes the item qualify or not qualify, for the exemption. The reason for my emphasis on specific black and white answers is because I intend to give each of our stores a copy of your letter to show customers, if they question why we charge sales tax on these items. ***An ambiguous answer will not help my situation. I am receiving considerable 'heat' from our customers on this issue.***

Send your determination to the following address:

ADDRESS

Thank you in advance for your help in clarifying this important tax matter.

Even though sales may be at retail, the Illinois Retailers' Occupation Tax (i.e. sales tax) does not apply to farm machinery and equipment, both new and used, including that manufactured on special order, certified by the purchaser to be used primarily in production agriculture or State or federal agricultural programs. Machinery means major mechanical machines or major components thereof contributing to the production agriculture process or used primarily in State or Federal agricultural programs. New or used repair or replacement parts, necessary for the operation of the machine used in production agriculture or in State or Federal agricultural programs, qualify for the exemption. Equipment means any independent device or apparatus separate from any machinery, but essential to production agriculture. Please refer to 86 Ill. Adm. Code 130.305, enclosed.

Your letter inquires about several items. Please note that no item qualifies for the exemption in and of itself. This determination rests on how the item will be used. Please be advised that no transaction is exempt unless the seller obtains a certification that contains the information required by Section 130.305(m). Machinery or equipment that is used both in qualifying and non-qualifying activities must be used primarily in a qualifying activity in order for the exemption to apply.

Subsection 130.305(i) states that "[f]arm machinery would include tractors, combines, balers, irrigation equipment, cattle, and poultry feeders, but not improvements to real estate such as fences, barns, roads, grain bins, silos and confinement buildings . . ." As a result, building materials such as barb wire, electric wire, steel or wood posts, fences, electric wire insulators and gates that are converted into real estate do not qualify for the exemption. Sales of these items are fully taxable. The fact that these materials may only be used temporarily is immaterial. Such sales do not qualify for the farm machinery and equipment exemption.

We are not sure of the type of cattle and hog panels about which you have made inquiry, or how these panels will be used. If these are panels that become a part of a permanent structure, than their sales would be taxable as building materials. However, as described in subsection 130.305(k), certain portable panels for confinement facilities can qualify. If these are the types of panels about which you are inquiring, then they could qualify for the exemption if used over 50% of the time for this purpose. In addition, portable gates used primarily in conjunction with such a confinement facility could also qualify for the exemption.

Please refer to the last sentence of 86 Ill. Adm. Code 130.305(k) for the rule that baling twine and baling wire are taxable as supplies when purchased for use or consumption. This means they cannot qualify for the Farm Machinery and Equipment Exemption. Baling twine and baling wire, however, can be used so as to constitute containers within the meaning of 86 Ill. Adm. Code 130.2070, enclosed.

The sale of containers, as that term is defined in 86 Ill. Adm. Code 130.2070, is not subject to Retailers' Occupation Tax when the purchasers of such containers transfer to customers the ownership of the containers together with what is contained in them. Purchases of baling twine and baling wire can thus be nontaxable when they are used to bind and wrap hay that is sold so long as the purchasers provide suppliers with Certificates of Resale that meet the requirements of 86 Ill. Code

130.1405, enclosed. If, on the other hand, the purchasers of baling twine and baling wire will use the hay themselves, then such purchases are taxable and cannot be made for resale.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Karl W. Betz  
Associate Counsel

KWB:msk  
Enc.